

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15103 of the Fifth Gould Limited Partnership, pursuant to 11 DCMR 3108.1 and 3107.2 for a variance from the use provisions (Sub-section 501.1), or in the alternative, a special exception under Section 505 to establish a parking lot in an HP/SP-2 District at premises 915-21 Massachusetts Avenue, N.W., (Square 370, Lots 801 and 802).

HEARING DATE: September 20, 1989
DECISION DATES: November 1 and December 6, 1989

FINDINGS OF FACT:

1. The property is located on the north side of Massachusetts Avenue between 9th and 10th Streets and is known as premises 915-21 Massachusetts Avenue, N.W. It is zoned HR/SP-2.
2. The lot is irregular in shape and is part of a larger parking lot which is located in both the SP and C-2-A zones. Access to the subject lot is via a driveway off of Massachusetts Avenue.
3. The premises have been operated as a parking lot since 1965 with Board of Zoning Adjustment approval. The most recent approval of the continuation of the parking lot was pursuant to BZA Order No. 14276, dated March 12, 1986. In that order the Board granted a continuance of the lot until March 11, 1989. The termination date of March 11, 1989 reflected the maximum time allowed under 11 DCMR 505.1 for the continuation of a parking lot in the SP zone.
4. The parking lot contains approximately 11,657 square feet of area and has a capacity of forty parking spaces. The parking lot provides short-term parking for users of nearby retail facilities. The lot is used at night and on weekends by area residents and also serves the Mount Vernon Place Methodist Church and patrons of the Washington Convention Center. All day commuter parking is confined to the portion of the parking lot located in the C-2-A District and is not permitted on the subject site.
5. The parking lot is operated from 6:00 A.M. to 4:00 P.M., Monday through Friday. There is an attendant on the lot during all hours of operation.

6. The lot is cleaned daily and is in compliance with the conditions of the Board's previous orders. No complaints have been received about the operation and maintenance of the lot.

7. The lot is in compliance with the conditions of the prior order of the Board.

8. The applicant purchased the property in approximately 1984. The applicant has acquired other properties adjacent to the subject lot and has entered into discussions with other neighbors to determine what the total development might be.

9. In the applicant's opinion, the subject area has merit but is presently in transition and not ripe for active development. The area is in need of upgrading before it becomes marketable for prospective hotel operation companies.

10. The Office of Planning (OP), by memorandum dated September 13, 1989, recommended approval of the application. The OP was of the opinion that the continued use of the site as a parking lot would not have adverse impacts on surrounding properties due to traffic, noise or operations. The OP was further of the opinion that the existing lot seems to be the only possible and reasonable use of the property at the present time.

11. The Department of Public Works (DPW), by memorandum dated July 10, 1989, offered no objection to the continued operation of the parking lot. The DPW was of the opinion that there would be no foreseeable objectionable transportation impacts from the continued operation of the lot. The DPW noted that the lot was poorly maintained and striped and recommended that the applicant repave and restripe the lot.

12. Advisory Neighborhood Commission (ANC) 2C, by letter dated September 11, 1989, supported the granting of the application contingent upon the following conditions:

- a. Repave the subject site and secure the perimeter of the property with a fence;
- b. Landscape the perimeter of the site to reduce the visual severity of the fence;
- c. Add appropriate lighting from dusk to dawn;
- d. Maintain the property by regular cleaning and removal of debris;

- e. Include the community in discussions relative to future development plans, and;
- f. Limit the approval to a period of four years.

13. There was no opposition to the granting of the application of record or at the public hearing.

14. At the conclusion of the public hearing the Board directed staff to request the Zoning Commission to review the provisions of 11 DCMR 505 relative to the time limit on Board approval of parking lots as special exceptions. The Board further advised the applicant to consider whether it would be appropriate to petition the Zoning Commission to consider a rezoning in the subject area.

15. The Board deferred consideration of the application at its public meetings of October 4 and November 1, 1989 to afford Board members Roasberg and Thornhill an opportunity to participate in the decision.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance. The Board notes that, although the application was advertised to allow alternative consideration of the application as a special exception pursuant to 11 DCMR 505, the Board is unable to consider this case as such because the continuation of the parking lot beyond March 11, 1989 is specifically prohibited by 11 DCMR 505.1. In order to be granted the requested use variance, the applicant must submit substantial evidence of an undue hardship upon the owner arising out of some exceptional or extraordinary condition which is inherent in the property itself which would preclude the reasonable use of the property in a manner consistent with the Zoning Regulations.

The Board concludes that the applicant has not met the requisite burden of proof. Although the applicant offered evidence to substantiate its compliance with the criteria set forth in 11 DCMR 505, the record contains no more than a scintilla of evidence purporting to satisfy the burden necessary to justify the granting of a variance from the use provisions of the Zoning Regulations. The Board concludes that the property is not affected by an exceptional or extraordinary situation or condition which would result in an undue hardship upon the owner. No probative evidence was offered that the property could not reasonably be put to a use permitted in the SP District.

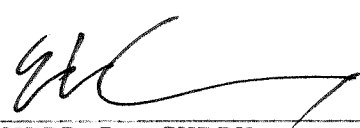
The Board further concludes that the relief can not be granted without substantial detriment to the public good and

without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly it is ORDERED that the application is hereby DENIED.

VOTE: 3-0 (William F. McIntosh and Carrie L. Thornhill to deny; Tersh Boasberg to deny by proxy; Paula L. Jewell and Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: APR 5 1990

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15103order/BHS18

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15103

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated APR 5 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: APR 5 1990